IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4517 OF 2006
IN
ARBITRATION APPLICATION (L) NO. 678 OF 2006

Santosh K. Kejriwal,]
of Mumbai Indian Inhabitant,]
residing at 128, Prabhat Building,]
'B' Road, Churchgate,]
Mumbai 400 020] ...Applicant

V/s.

1. M/s. Lloyds Finance Limited]

2. The Official Liquidator,]
High Court, Bombay, appointed]
Liquidator of M/s. Orient]
Syntex Ltd. (in winding up)]

3. Shri Justice S.M. Jhunjhunuwala (Retd.) ...Respondents.

Mr. Anand Kumar for the Applicant – in support

Mr. T.R. Yadav i/by M/s. C.R. Naidu & Co. for Respondent No. 1 – to show cause

Ms. D. Dey i/by Mr. Devasis Mitra for Respondent No. 2 – to show cause.

CORAM: SWATANTER KUMAR, C.J.

RESERVED ON: APRIL 13,2007
PRONOUNCED ON: APRIL 19, 2007

P.C.:-

1. This Notice of Motion was taken out by the applicant for condonation of delay in filing the application for the reasons stated in the affidavit in support of the Motion.

The parties have entered into an Agreement which contained the arbitration clause. Disputes between the parties were referred to the Sole Arbitrator Shri Justice S.M. Jhunjhunuwala (Retd.) in terms of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"). The Arbitrator made and published his Award on 28th August, 2006. The said Award, according to the applicant, was served on him through the Bombay Chamber of Commerce and Industry on 30th August, 2006. However, the copy thereof was received on 2nd September, 2006. The applicant states that he was not keeping good health and was suffering from Hypertension

and breathlessness. He had undergone two heart surgeries for angioplasty and was unable to lead an active life in November, 2006. The applicant further states as under:-

> "The Doctor has certified that I am suffering from uncontrolled hypertension, wheezing, severe ostro arthritis and both my knee joints are beyond repair. Due to said factors, I am unable to move about freely without support."

A copy of the Medical Certificate from Dr. S. Parthasarathi dated 16th November, 2006 has been annexed to the affidavit as Exhibit ' 'A Having asked to rest for 5 weeks, the applicant could not attend office and/or give instructions to the counsel for filing an application, and there was a delay of 17 days.

2. The Notice of Motion was opposed by respondent Nos. 1 and 2 on the ground that no sufficient cause has been shown for condonation of delay and the Medical Certificate in support of the said Motion was not an authenticated document. It was also contended that the Court has jurisdiction to condone the delay.

3. At the very outset, it may be noticed that under the provisions of Section 34(3) of the Act, the power is vested in the Court to condone delay beyond three months. However, on the expiry of four months, there would be loss of jurisdiction in terms of the judgment of the Delhi High Court in *Girdhari Lal Soni V/s. M/s. MMTC Ltd*. [OMP No. 424 of 2004 and IAs No. 7796 and 7701 of 2004] delivered on 27th October, 2005, the relevant portion whereof is quoted below:-

> "...When the objections were first filed on 26th September, 2003 they were filed without payment of court fee. The Registry had raised number of objections, including non-payment of the court fee. The objections when returned for the first time to the petitioner were not refiled within the time prescribed and were filed on 29th October, 2003, beyond the prescribed period of limitation. This question is no more *res integra* and has been finally concluded and answered in the judgment of the Supreme Court in the case of Union of India vs. Popular Construction Company (2001) 8 Supreme Court Cases 470 where while answering this specific question, whether provisions of Section 5 of the Limitation Act, 1963 are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996, the Court held as under:-
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> > 'The appellant then sought to rely on a decision of this Court in *Union of India v. Hanuman Prasad & Bros.* [2000 AIR SCW 3934(2)] to which one of us (Ruma Pal, J.) was a party. It is contended that the

> decision is an authority for the proposition that Section 5 of the Limitation Act applied to objections to an award under the 1996 Act. It is true that in the body of that judgment, there is a reference to the 1996 Act. But that is an apparent error as the reasoning clearly indicates that the provisions of Section 30 of the Arbitration Act, 1940 and not Section 34 of the 1996 Act were under consideration. In order to clarify the position, we have scrutinised the original record of *Hanuman Prasad & Bros. D*ecided on 6.3.2000. We have found that that was indeed a case which dealt with an award passed and challenged under the Arbitration Act, 1940. No question was raised with regard to the applicability of the Limitation Act to the 1940 Act. The only issue was whether the High Court should have refused to condone the delay of 2 months and 22 days in filing the objection to the award. This Court found that sufficient cause had been shown to condone the delay and accordingly set aside the decision of the High Court. This decision is as such irrelevant.
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> ....'

"3. The above judgment is squarely applicable to the facts and circumstances of the present case. Once the power to condone the delay is not vested in the Court, the application for condonation of delay in filing or refiling cannot be exercised. In the present case, as already noticed, the objections were filed even without the court fee, as such it would be no presentation of the petition in the eyes of law. Thereafter, the objections were again taken back by the petitioner for removal of objections and the same were refiled nearly after one year. This conduct of the petitioner would certainly disentitle him from claiming any relief in the present petition. The judgment of the Supreme Court would stare the petitioner in face. Consequently, I decline to condone the delay, as the

provisions of Section 5 of the Limitation Act are not applicable to the Arbitration and Conciliation Act, 1996.

4. In view of the above order IA No. 7701/2004 does not survive for consideration having become infructuous, and is dismissed as such."

4. The power of the Court to condone delay in the initial period of four months can hardly be taken away. The applicant is required to show sufficient cause for condonation of delay. The reasons stated by the applicant in the affidavit for condonation of delay cannot be said to be insufficient or lack in *bona fides*. The applicant was sick, was admitted to hospital and had already undergone angioplasty. There is delay only of 17 days, which has been explained by the applicant. Once sufficient cause is shown, then the Court, normally, would be inclined to condone delay, and permit the parties to have their rights adjudicated upon on merits.

5. For the reasons aforesaid, the delay of 17 days in filing the application is condoned. The Notice of Motion is accordingly allowed.

CHIEF JUSTICE.